



Showing judges how to walk the walk: the Feminist Judgments Project Aotearoa

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Rhonda Powell, University of Canterbury, School of Law

Feminist judging and power

“One of the objectives of liberal feminism has been to get women into positions of power, but it has not developed any theory of what women should do when they get there.”

(R Hunter, ‘Can Feminist Judges Make a Difference?’ (2008) 15 *International Journal of the Legal Profession* 7-36, 7)

What would we expect feminist judges to do?

- Ask the 'woman question'
- Take into account women's interests
- Listen to women's perspectives
- Tell women's stories
- Challenge gender bias
- Contextualise legal decisions
- Address injustice and inequality

(Hunter, 2008, 10-15)

The Feminist Judgments Project Aotearoa

(Elisabeth McDonald, Rhonda Powell, Māmari Stephens and Rosemary Hunter)

- Inspired by success of projects in other countries
- Funded by New Zealand Law Foundation
- Rewriting 26 NZ judgments – range of areas of law
- Academics, practitioners, retired judges, students
- Mana wāhine strand – universality and particularity in the context of Māori women
- Aim to publish an edited collection in 2017

Hallagan v Medical Council (HC Wellington, 2 December 2010)

“... if you have a conscience objection to abortion and you are consulted by or on behalf of a pregnant woman who wishes to have an abortion, you must ... arrange for the woman’s case to be considered by another medical practitioner...”

(Medical Council of New Zealand, ‘Beliefs and Medical Practice’, 2010, para 32)

Health Practitioners Competence Assurance Act 2003, s174

“the health practitioner must inform the person ... that he or she can obtain the service from another health practitioner or from a family planning clinic.”

Judicial approach – purported neutrality

- Provides very little context
- Avoided thorny issue of potential clashes of rights
 - Doctor vs mother
 - Mother vs foetus
- No consideration of impact on women's access to abortion
- No incorporation of women's perspectives
- No representation of women's interests

Impossible to do justice in this context without asking the 'woman question'.

How to walk the (feminist) walk

- **Contextualise** the legal dispute:
 - Discuss the social context of abortion
 - Confront the potential conflict of rights
- Reflect on gendered nature of the **(‘woman’) question**
- Consider the impact of interpretation on **women’s interests**
- Comment on lack of representation of **women’s perspectives**

Feminist judging as a means of ‘resistance’?

“The refusal to accept or comply with something.”

(Oxford Dictionaries Online)

Have female lawyers and female judges in practice ever offered sufficient resistance or have they been preoccupied with power?